

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4959 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ACHYUT CHINUBHAI

Versus

A'BAD MUNICIPAL CORPORATION

Appearance:

MR N.K.MAJMUDAR for Petitioners
No one is present on behalf of the respondent
- Ahmedabad Municipal Corporation.

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/04/99

ORAL JUDGEMENT

Heard learned counsel.

This Special Civil Application has been filed against the Ahmedabad Municipal Corporation by the petitioners with the prayers as under:-

"(A) to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the alleged auction sale of the properties of the petitioners alleged to have been held on 23rd and all subsequent steps in pursuance of the said auction sale alleged to have been held by the respondent Corporation;

(B) Pending the final hearing and disposal of this petition, to grant interim relief restraining the respondent Corporation from taking any steps in pursuance of the alleged auction sale of the petitioners' properties alleged to have been held on 23rd of June 1983, and further restraining the Respondent Corporation from disposing off any other properties of the petitioners by auction sale for recovery of Municipal Taxes without first adjusting the amount of compensation recoverable by the petitioners for lands acquired for the Respondent Corporation;

(C) to grant ad-interim exparte relief in terms of prayer (B) hereinabove;

(D) to award costs of this petition to the petitioners;

(E) to grant such other reliefs as this Hon'ble Court may deem fit and proper."

2. The petitioners claim that they had valuable properties inherited by them near the Ahmedabad Railway Station on the Saraspur side. These properties were popularly known as "Madhubhai Mill Compound" or M.R.Colony. The petitioners own various properties of S.Nos.125/P, 128/P, 129/P, 132/P, 133/P, 134/P and 135/P of Final Plot No.101 of T.P.Scheme No.16. On the land in question, originally there was a Textile Mill popularly known as Madhubhai Mill owned by the Ahmedabad Ginning and Manufacturing Co.Ltd. On liquidation of the said Company, the land with superstructures were purchased by Sir Chinubhai Madhavalal, Second Baronet who was the father of the petitioners Nos.1 and 4, that there had been partition from time to time and some portion of the land was acquired in acquisition proceedings but ultimately the petitioners were the owners of land bearing approximately 40475 sq.yds. It is also the case of the petitioners that there were several superstructures and most of them were rented out. The total area of the built-up superstructures was about

20000 sq.yds. All these properties had been let out in or about the year 1940 by the father of the petitioners Nos.1 and 4 and those tenants continued to occupy the premises since then, that the rents fixed are extremely low compared to their market value at the relevant time but in view of the restrictive tenancy laws, it was impossible for the petitioners to realise any increase in the rent of the property. In respect of this property when the tax was assessed, it was found to be in excess of the rental value. It has been stated that tax was the liability of the tenant and the tenants were directly receiving the Municipal tax bills and paying the same. To illustrate, it has been stated that the property which was known as N.S.Mills carried the annual rent of Rs.10,530/- whereas the Municipal tax and education cess in respect of the said property was assessed at Rs.18,543.64 Ps. That with the increase in the tax the tenants started defaulting. However, the tax was not paid either by the tenant or the owner. When the taxes fell in arrears notices were issued by the Municipal Corporation for payment of arrears etc. It has been then stated that in the meanwhile certain other properties of the petitioners were sought to be acquired and acquisition proceedings were initiated for acquisition of the land of the petitioners for the Municipal Corporation. While referring to an application dt.2.4.81, the copy of which has been annexed as Annexure 'A' it has been stated that the petitioners had made representation to the Municipal Corporation to recover the amount of taxes allegedly due, from the amount which was to be received as compensation by the petitioners as a result of acquisition of their lands after giving proper receipts to them so that they in turn can recover the amount from the tenants. Ultimately the Municipal Corporation put the entire built up properties to auction sale proposed to be held on 23.6.83 with regard to 20000 sq.yds. It is then stated by the petitioners that there were no bidders at all at the auction and the respondent made an offer to itself for the purchase of these properties for a token sum of Rs.1/- only and thus the property with built up area of 20000 sq.yds. was purchased by the Municipal Corporation in the alleged auction sale on a token amount of Rs.1/per property and subsequent steps were taken and the alleged sale was confirmed by the respondent - Corporation in its own favour. It is also the case of the petitioners that on the date of the alleged auction sale the alleged arrears were about Rs.60000/- to Rs.70000/- only whereas the properties were worth several lakhs. Whereas the petitioners were denying their liability to pay the tax dues, there was no question of petitioners purchasing

that property from this auction sale. Besides, the petitioners had made the offer that the amount of arrears of taxes may be recovered from the compensation to be received from acquisition of the land of the petitioners on behalf of the Municipal Corporation. The grievance has been raised that even this offer was not accepted and the respondent - Corporation arbitrarily proceeded to auction the property and in the process brought about a situation in which, on one hand the petitioners were deprived of their valuable property and on the other hand, the Corporation had not been able to recover its alleged dues in full.

3. It has been stated in para 10 of the petition that they had adopted just and fair approach inasmuch as with regard to the property of the petitioners, which had been acquired as per the judgment of this Court in First Appeal No.279/77, the petitioners were likely to get compensation of Rs.2,35,000/- and the petitioners had also made an offer that the dues of the tax may be appropriated against the said amount but the same was not accepted. It has also been stated that the respondent Corporation has still not paid this amount which is due as compensation with regard to the land, which was acquired way back in the year 1962. The petitioners go on to state that though possessed of valuable properties, they had no liquid fund because their properties had been the subject matter of acquisition proceedings and further that they had also received the notices of the Income-tax Department for recovery of their tax dues by sale of their properties. It has also been stated that the proceedings of the auction sale alleged to have taken place on 23.6.83 were illegal, without jurisdiction and were conducted arbitrarily and in contravention of the Rules, that adequate public notice of the sale was not given resulting into no offers being received at all for the valuable property. No upset price for the sale of these properties was fixed and without making proper endeavour of getting fresh offers when no offer came forward, the respondent - Corporation arbitrarily and in violation of Article 14 of the Constitution sold to itself the properties, which it had set out to illegal auction. That the Municipal Corporation did not take any measures like disconnecting water supply to bring home to the concerned persons, the gravity of the situation, which would have forced the tenants to clear up the arrears and the need to hold the auction could have been avoided.

4. With the averments and allegations as aforesaid, this Special Civil Application was filed in this court on

11.9.85. After issuing notice on 12.9.85, rule was issued by this court on 17.9.86 and the order was passed to maintain status quo. From the papers, which have been made available to us at the time of hearing, we find that no return has been filed. We have, therefore, gone through the pleadings and have heard learned counsel Mr. Majmudar appearing for the petitioners.

5. So far as the liability to pay the tax is concerned, there is no dispute. All that has been contended on behalf of the petitioners is that the tenants were paying the tax directly to the Municipal Corporation and, therefore, the Municipal Corporation should have taken steps to recover the taxes directly from the tenants or the dues should have been adjusted against the amount of compensation, which could be payable to the petitioners against the acquisition of their lands in the proceedings under the Land Acquisition Act. Whether the above amount was to be paid by the tenant or the petitioners, is certainly a dispute inter se the tenants and the owner. The fact remains that the tax was to be paid in respect of the properties owned by the petitioners and they were responsible for making the payment of tax to the Municipal Corporation, which was not paid and which remained unpaid. The Municipal Corporation was therefore left with no option but to proceed with the auction of the properties in question. The learned counsel for the petitioners has submitted that the respondent Corporation has not acted in just and fair manner for the purpose of recovering the tax dues. We fail to understand this contention altogether. The Municipal Corporation has acted in accordance with the relevant Rules. The learned Counsel for the petitioners has referred to Rules 41 and 42 under Chapter VIII of the Taxation Rules under the B.P.M.C. Act but we find that in the facts of the present case no factual foundation whatsoever has been laid in the body of the petition so as to invoke Rules 41 and 42 as nothing has been complained against the notice of the demand or the distress as contemplated under Rules 41 and 42. The learned counsel for the petitioners was at pains to submit that the Municipal Corporation could not have purchased the property to itself on a token price of rupee one only with regard to each property. In this connection we may make a pointed reference to Rule 47(7) of the Taxation Rules, which provides that it shall be lawful for the Commissioner on behalf of the Corporation to offer a nominal bid in the case of any immovable property put up for sale, provided that previous approval of the Standing Committee is obtained to such bidding. The learned counsel for the petitioners while inviting

our attention to the averments made in para 11 has submitted that the petitioners have reasons to apprehend that no such approval was obtained from the Standing Committee and nominal offer was made. In such matters, this Court cannot proceed on the basis of apprehension of a litigating party, particularly when there is no basis for such an apprehension. Whether previous approval of the Standing Committee had been obtained or not is a question of fact. On this factual aspect there is no positive averment either in para 11 or anywhere else in the entire body of this petition. The petitioners themselves have stated that when the property in question was notified for auction to be held on 23.6.83 no bidders were there at the auction and, thereafter, the respondent made an offer to itself for the purchase of these properties for a sum of Rs.1/- only. Rule 47(7), referred to above, makes it lawful for the Corporation to offer a nominal bid, in case of any immovable property being put to sale. The rule also incorporates a proviso with regard to the requirement of previous approval by the Standing Committee. There is a presumption about the regularity of the official Act and, therefore, when it is stated that the Municipal Corporation made an offer of Rs.1/-, it was a nominal bid, it has to be presumed as a part of the regularity of the Official Act that it must have obtained the previous approval of the Standing Committee. We are alive to the proposition that even such presumptions are rebuttable, but here is a case in which no material has been placed on record by the petitioners in rebuttal of such a presumption of the regularity of the Official Act as contemplated under the Indian Evidence Act. In this view of the matter, merely because the petitioners had made a bald and vague averment in para 11 that they apprehend that no such approval was obtained from the Standing Committee, the presumption of the regularity of the Official Act does not stand rebutted and we find that the Municipal Corporation must have acted in accordance with the requirements of Rule 47(7) and on that ground the auction sale cannot be held to be illegal.

6. So far as the petitioners' grievance of making adjustment of the due amount of taxes against the amount of compensation for their lands, which had been acquired under the Land Acquisition Act, is concerned, it may be pointed out that in para 10 of the petition the petitioners themselves have stated that the property of the petitioners had been acquired as per the judgment of this Court in First Appeal No.279/77. Merely because they say that they were likely to get the compensation of Rs.2,35,000/- the same cannot be taken to be granted. It

is not the case of the petitioners before this Court that in respect of the properties, which had been acquired under the Land Acquisition Act, any definite amount of compensation was determined under any award. The petitioners have not made reference even to the number of the acquisition proceedings or the date or any other particulars of the Award, if any. In such a situation, the Municipal Corporation, which is a body under the Municipal Corporations Act, is not expected to wait till the question of compensation is decided and determined by some other functionaries of the State Government under the Land Acquisition Act. The Municipal Corporation is a local authority, which has to act in accordance with its own Act and Rules framed with regard to the recovery of the taxes and it is not established in the facts of the present case that the Municipal Corporation has violated any Rule or has acted in any arbitrary or unjust manner or that it has been unfair to the petitioners in the matter of the recovery of the taxes and, therefore, in respect of the prayer with regard to the adjustment of the dues of the taxes against the amount of compensation, for which there is no definite material on record, no direction can be issued by this Court as has been prayed by the petitioners in this Special Civil Application. Even otherwise, the petitioners, who have been defaulting in the matter of the payment of taxes, are not entitled to invoke the equitable jurisdiction of this Court under Article 226 of the Constitution of India. It is a case in which neither the facts nor the law is in favour of the petitioners and they cannot claim equity. The facts, as disclosed by the petitioners in the body of the petition even if assumed to be correct, do not show that the respondent Municipal Corporation has acted in an arbitrary, unjust or unfair manner towards the petitioners.

7. In the facts and circumstances of this case, for the reasons as aforesaid, we do not find that the petitioners are entitled to any of the reliefs claimed by them in this petition. There is no merit in this Special Civil Application. The same is hereby dismissed. Rule is hereby discharged. Interim order to maintain status quo passed on 17.9.86 in these proceedings automatically stands vacated. No order as to costs.

At this stage the learned counsel Mr. Majmudar has fairly submitted that Civil Application has been moved for amendment. The petitioners' counsel is not in a position to give the particulars of such Civil Application. No such Civil Application is listed before us. This is a matter of 1985 and it is on board since

5.4.99. Therefore, we do not consider it necessary to wait for any such Civil Application. If at all any such Civil Application is pending, the same shall be treated as disposed of in view of the order, which we have passed today, as above, while deciding the main petition.